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5 UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
6 AT TACOMA

7 PRESTON E. RICHARDSON,

8 Plaintiff,

9 v.

10 NANCY DAUTH, *et al.*,

11 Defendants.

Case No. C06-5727 FDB

ORDER ADOPTING REPORT AND
RECOMMENDATION DISMISSING
PLAINTIFF'S CLAIMS WITHOUT
PREJUDICE, EXCEPT AS TO
DEFENDANT NANCY DAUTH


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14 This matter comes before the Court on the Report and Recommendation of the Magistrate
15 Judge that, except as to Defendant Nancy Dauth, Defendants' motion to dismiss Plaintiff's civil
16 rights action be granted for failure to exhaust administrative remedies, failure to state a claim and on
17 the basis of qualified immunity. Plaintiff, an inmate at the Washington State Reformatory filed this
18 civil rights complaint pursuant to 42 U.S.C. § 1983 alleging violations of his First and Fourteenth
19 Amendment rights, the Religious Land Use and Institutionalized Persons Act and Art. I §11 of the
20 Washington State Constitution.

21 As detailed by the Magistrate Judge, other than the claim against Defendant Dauth, Plaintiff
22 has not yet fully exhausted his available administrative remedies. Concerning Defendant Dauth, the
23 Magistrate Judge recommends that Plaintiff be given the opportunity to amend his complaint to
24 allege, if possible, the facts showing how Defendant Dauth personally participated in the alleged
25 deprivation of Plaintiff's rights.

1 The Court, having reviewed the Report and Recommendation of Magistrate Judge Karen L.
2 Strombom, objections to the Report and Recommendation, if any, and the remaining record, does
3 hereby find and ORDER:

- 4 (1) The Court adopts the Report and Recommendation;
- 5 (2) Defendants' motion to dismiss (Dkt. # 28) is **GRANTED except as to Defendant**
6 **Nancy Dauth** and Plaintiff's claims against all Defendant **except Defendant Nancy**
7 **Dauth** are **DISMISSED WITHOUT PREJUDICE**;
- 8 (3) Plaintiff is granted leave to amend his Complaint to allege facts showing how
9 Defendant Dauth personally participated in depriving Plaintiff of a right, privilege or
10 immunity secured by the Constitution or law. Plaintiff's amended complaint must
11 relate to the issues raised in Grievance No. 0610181. The amended complaint must
12 carry the same case number as this one. Plaintiff is advised that the amended
13 complaint operates as a *complete* substitute for an original pleading. *See Ferdik v.*
14 *Bonzelet*, 963 F.2d 1258, 1262 (9th Cir. 1992) (citing *Hal Roach Studios, Inc. v.*
15 *Richard Feiner & Co.*, 896 F.2d 1542, 1546 (9th Cir. 1990) (as amended), *cert.*
16 *denied*, 506 U.S. 915 (1992). Therefore, his amended complaint must include all
17 parties, causes of action, and exhibits. Plaintiff shall file his amended complaint
18 **within twenty (20) days of the date of this Order**;
- 19 (4) This matter shall be re-referred to Magistrate Judge Karen L. Strombom for further
20 proceedings; and
- 21 (5) The Clerk is directed to send copies of this Order to Plaintiff, counsel for Defendants
22 and to the Hon. Karen L. Strombom. The Clerk is also directed to send Plaintiff the
23 appropriate forms so that he may file an amended complaint.

24 DATED this 25th day of February, 2008.

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26 FRANKLIN D. BURGESS
UNITED STATES DISTRICT JUDGE